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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,402	03/22/2001	Jaspreet Singh	11710-0210 (44043-228530)	3828

7590

12/12/2003

KIMBERLY-CLARK WORLDWIDE, INC.  
LEGAL DEPARTMENT  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**  
*Supplemental*

Application No.

09/814,402

Examiner

Jacqueline F Stephens

Applicant(s)

SINGH ET AL.

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 25 February 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☒ A proposed reply was received on 14 April 2003, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.

The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See Continuation Sheet



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SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment: The proposed reply contains a timely filed amendment, but does not place the application in condition for allowance. Regarding the rejection of claims 1-3, 6, and 8-13, applicant argues Assarsson fails to teach the claimed invention as the hydrogel particles of Assarsson are coated and then dried before they are used in a web as opposed to claimed invention where the webs are formed with the hydrogel and then dried. The argument refers to product-by-process limitations in the claims. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113. Assarsson does not disclose superabsorbent materials and fibers integrated into a web. Determination of patentability is based on the end structure of the product itself. Unless applicant can show that the process of making his invention renders a different physical structure as opposed to the process of making the invention of Assarsson, the product of Assarsson is functionally equivalent to the claimed invention and the rejection is valid. See MPEP 2113. Additionally, with respect to the Shake-Out values, these arguments are based on amended claims that will not be entered, therefore, the arguments are nonpersuasive.

Regarding the rejection of claims 17-52, applicant argues Veith fails to teach the claimed invention as the test Veith uses to determine shake-out values is not the same as the test the applicant uses. It is noted that the features upon which applicant relies (i.e., a specific Shakeout Test) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Since applicant has not claimed a specific shake-out test, only that the web experiences a web loss of less than about 5% when subjected to "a Shakeout Test", the Shakeout Test values of Veith reads on the aforementioned claims.